

OGC Has Reviewed

26 August 1955

MEMORANDUM FOR: Office of Personnel

SUBJECT : Recent Case Concerning Removal of
Government Employees from Office

1. Attention is invited to the recent decision of the United States Court of Appeals for the District of Columbia (No. 12438, Thomas v. Ward, August 18, 1955), concerning removals from Government service for cause. A copy has been forwarded to your office.
2. In essence, the Court's decision is that a department may remove an employee for cause as provided by the Lloyd-LaFollette Act without regard to the Performance Rating Act of 1950. The Court rejected Ward's contention "that an employee in the classified service can be removed 'for such cause as will promote the efficiency of such service' (5 U.S.C. § 652 (1952)), where the 'cause' relates to the employee's performance of his official duties, only if he first has been rated unsatisfactory, and that a performance rating of satisfactory precludes dismissal for 'cause' of that sort" (p.4). The Court noted that an unsatisfactory performance rating may sometimes lead to dismissal for cause. "On the other hand, though an employee's ordinary over-all performance of duties throughout the rating period may be rated as satisfactory he may still be guilty of conduct in connection with the execution of his official duties, either in particular instances or in a particular aspect of his tasks, which would justify dismissal under 5 U.S.C. § 652 (1952) in the interest of promoting the efficiency of the service" (p.5). The Court noted and relied on the testimony before the House Committee of the former Secretary of Labor (Mrs. Perkins) which revealed "the extreme difficulties suffered by an executive department in using the alternative method of discharging an inefficient employee through giving him an unsatisfactory rating" (p.6).
3. The Lloyd-LaFollette Act (5 U.S.C. § 652) not only provides an alternate method to the performance rating technique for removing employees, but also requires a minimum procedure, namely, an employee may be removed only "for such cause as will promote the efficiency of the service and for reasons given in writing" and must be given a reasonable time to reply in writing to the charges against him. Although the Act does not apply to CIA (it applies only to persons in the classified civil service), the procedure established by R 20-705, namely, 30 days notice and the right to reply, it is believed at least meets the minimum requirements of that Act.
4. Since the Performance Rating Act of 1950 by amendment of 1954 does not apply to CIA there is no basis to suggest that because the Lloyd-LaFollette Act does not apply to CIA the Ward decision would require us to remove only under the Performance Rating Act of 1950.

5. The Ward case did not involve a veteran, but the Court suggested that substantially the same question would have been presented if Ward had been removed under the Veterans Preference Act of 1944 (5 U.S.C. § 863) (p.2).

6. In short, it is believed the Ward decision is of no practical consequence to this Agency and that we may continue to remove employees for cause, in accordance with the procedures provided by R 20-705, as a proper exercise of the inherent authority of an agency head to administer and direct his agency and to discharge his statutory and other responsibilities. The decision also would not affect the Director's authority to remove pursuant to Section 102(c) of the National Security Act of 1947.

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Assistant General Counsel

OGC:RHL:ss

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